

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0230P

Use Tax

Calendar Years 1999 and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a partnership that owns a hotel in Indiana.

At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items such as shrubbery, fireplace screens, towel holders, shower seats, telephone system materials, pool chemicals, televisions, and other miscellaneous items. The auditor allowed a tax credit for items for which the taxpayer erroneously paid sales tax.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that over the nine months of construction, hundreds of invoices were paid and the sales tax was properly included and, as noted by the audit results, very few invoices are included that failed to properly pay sales tax. Taxpayer states it was not negligent, and to the contrary took reasonable means to properly pay and remit sales tax.

Taxpayer remitted no use tax for 1999 and approximately five percent (5%) in the year 2000. One of the partners is a CPA actively involved with the company who should have been aware of the State's Use Tax laws.

45 IAC 15-11-2(b) states, “Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to self assess and remit use tax on more than ninety five percent (95%) of its untaxed purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.